THE HONOURABLE SRI JUSTICE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE D.APPA RAO

Writ petition No.12217 of 2007

Dated:05.07.2007

Between:

Nallagonda Ramaiah, S/o Yellaiah

…..Petitioner

And

State of Andhra Pradesh, rep. By the Chief Secretary, Secretariat Buildings, Hyderabad and others.

….Respondents

THE HONOURABLE SRI JUSTICE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE D.APPA RAO

Writ Petition No.12217 of 2007

ORAL ORDER: (per the Hon'ble Sri Justice D.S.R.Varma)

Heard the learned counsel appearing for the petitioner and the learned Assistant Government Pleader, representing the learned Advocate General, appearing for the respondents.

2.This writ petition of Habeas Corpus is filed questioning the detention of one Nalgonda Seetha Ramaiah (son of the petitioner) for the offence punishable under Section 2 (b) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for brevity 'the Act') on the ground that he was indulging in the offence of possession, transportation and sale of illicit distilled liquor in and around of Telukutla

village, Gurazala Mandal, Guntur District, which was prejudicial to the public order and tranquillity causing danger to public health.

3.The detaining authority had based its detention order on the following four grounds:

> **1. On 07.08.2006 at about 4.00 pm, it is found in your house bearing D.No.2-34, S.T.Colony, Telukutla village of 3 gunny bags having 400 I.D. arrack sachets in the 1st bag, 300 I.D. arrack sachets in the 2nd bag and 300 I.D. arrack sachets in the third bag of 100 Ml. capacity each. The illicit distilled liquor sachets were seized from you and you have admitted the said I.D. liquor sachets were manufactured by him for sale in the surrounding villages. After taking 2 I.D. arrack sachets from each bag as sample for the purpose of chemical analysis, you are arrested under the cover of mediator report dated 07.08.2006, the same was registered as an offence vide PR.No.64/06-07 u/s.7 A r/w.8(e) of A.P.Prohibition Act, 1995. In the said case you are sent to judicial custody. The Hon'ble II A.M.M., Gurazala enlarged you on bail. The Hon'ble II A.M.M., Gurazala in his Dis.No.1229 dt.19.10.2006 has forwarded the samples to the Regional Prohibition & Excise Lab, Guntur for analysis.**
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> **The Chemical Examiner, Guntur after analysing the samples of liquid received with seals correct and intact from the Hon'ble II A.M.M., Gurazala in Dis.No.1229 dt.19.10.2006, opined in Rc.No.1342/2006 dt.31.10.2006 in Sl.No.4560 to 4562 that the sample is illicit distilled liquor, it is an unlawful product containing acids, fusel oil and allied impurities which are injurious to health, hence not fit for human consumption and also expressed that it is manufactured in an unclean and unhygienic atmosphere. The charge sheet in this case was filed in II A.M.M. Court, Gurazala and assigned CC.No.48/07 and the case is pending trial and the case posted to 07.09.2007.**
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> **2. Again on 03.10.2006 at about 4.00 pm one Damera Dangiah, S/o.Prabhakar, R/o.GIC Colony, Gurazala and Kukkamudi Nagaiah S/o.Yerra Pullaiah, R/o.GIC Colony, Gurazala are found in possession of a white polythene bag of 205 I.D. arrack sachets (total 410 I.D. arrack sachets) each near Kamusula Vari**

Kunta beside the Amaralingeswara Swami Temple, 1 Km. North-West to Gurazala village. On enquiry they confessed that they had purchased the I.D. arrack sachets from you to eke out their lively hood. After taking two I.D. arrack sachets each from the bags as sample for the purpose of chemical analysis, the two persons were arrested under the cover of special report dated 03.10.2006, the same was registered as an offence vide PR.No.96/06-07 u/s.7 A r/w 8(e) of A.P.Prohibition Act, 1995. In the said case, you have surrendered in the Hon'ble II AMM Court, Gurazala on 06.10.2006. The Hon'ble II A.M.M., Gurazala enlarged you on bail. The Hon'ble II A.M.M., Gurazala in his Dis.No.1229 dt.19.10.2006 has forwarded the samples to the Regional Prohibition & Excise Lab, Guntur for analysis.

The Chemical Examiner, Guntur after analysing the samples of liquid received with seals correct and intact from the Hon'ble I A.M.M., Gurazala his Dis.No.1229 dt.19.10.2006 opined in Rc.No.1342/2006 dt.31.10.2006 in Sl.No.4594 and 4595 that the samples are illicit distilled liquor, it is not fit for human consumption and also expressed that it is manufactured in an unclean and unhygienic atmosphere and injurious to health. The charge sheet in this case was filed in II A.M.M. Court, Gurazala on 17.02.2007 and assigned CC.No.50/2007 and the case is pending trial and the case posted to 25.05.2007.

3. Again on 06.11.2006 at about 3.00 pm you are found in possession of one white polythene bag containing 375 I.D. arrack sachets each of 100 Ml. near Muslims burial ground, near Zinkalametta, at two furlongs North to Telukutla village of Gurazala Mandal. On enquiry you admitted that the sachets are for sale in around village of Telukutla village. After taking two I.D. arrack sachets from the bag as sample for the purpose of chemical analysis you are arrested under the cover of special report dated 06.11.2006. The same was registered as an offence vide PR.No.122/06-07 u/s.7 A r/w.8(e) of A.P.Prohibition Act, 1995. In the said case, you are sent to judicial custody. The Hon'ble II A.M.M., Gurazala enlarged you on bail. The Hon'ble II A.M.M., Gurazala in his Dis.No.1360 dt.15.11.2006 has forwarded the samples to the Regional Prohibition & Excise Lab, Guntur for analysis.

The Chemical Examiner, Guntur after

analysing the samples of liquid received with seals correct and intact from the Hon'ble I A.M.M., Gurazala his Dis.No.1360 dt.15.11.2006 opined in Rc.No.1465/2006 dt.02.12.2006 in Sl.No.5027 that the sample is illicit distilled liquor, it is not fit for human consumption and also expressed that it is manufactured in an unclean and unhygienic atmosphere and injurious to health. The charge sheet in this case was filed in II A.M.M. court, Gurazala on 17.02.007 and assigned CC.No.51/2007 and the case is pending trial and the case posted to 24.07.2007.

4. Again on 16.03.2007 at about 2.30 pm it is found in the thorn bushes 15 iron drums covered with gunny bags of 200 lts capacity containing 200 lts. of F.J.wash (Total 3,000 lts.) fit for manufacturing of I.D. liquor at Krishna river canal at about ½ KM to Gottimukkala village of Gurazala Mandal. On enquiry of the fisherman near by the place offence Sri Neelam Kasaiah, S/o.Mattaiah, R/o.Gottimukkala informed that the said iron drums belongs to Nalgonda Seeta Ramaiah, S/o.Ramaiah, R/o.Telukutla. After taking of F.J. wash from each drum (Total 650 Ml.) as sample for the purpose of chemical analysis, the same was registered as an offence vide PR.No.195/06-07 u/s.7 A r/w.8 (e) of A.P.Prohibition Act, 1995. In the said case you have surrendered in the Hon'ble II AMM Court, Gurazala on 04.04.2007. The Hon'ble II A.M.M., Gurazala enlarged you on bail. The case posted to 21.11.2007. The said F.J. sample was sent to Hon'ble II A.M.M. Gurazala to forwarded the sample to the Regional Prohibition & Excise Lab, Guntur for analysis. The Chemical analysis report is yet to be received.

4. The detenu was found to be in possession of ID liquor as mentioned above and chemical examination of the liquor found that it was illicit, injurious to health and unfit for human consumption. Basing on the said material, the detaining authority passed order of detention on 26.05.2007 and the detenu was directed to be detained and lodged in Central Prison at Rajahmundry. Subsequently, the Government, accepting the above report, issued G.O.Rt.No.3027, General Administration

(Law and Order-II) Department, dated 31.05.2007, approving the order of detention and the same was submitted to the Advisory Board and it is now pending.

5. The learned counsel appearing for the petitioner contends that while supplying grounds of detention and the grounds on which, the said detention was placed, the detaining authority did not supply the material on which the detention order was passed. He further contends that non-furnishing of material relied upon by the detaining authority is bad in law and consequently the order of detention is liable to be set aside. In support of his contention, he relied upon a decision in ***ICCHU DEVI vs. UNION OF INDIA***[1], wherein the apex Court, while dealing with detention of a detenu under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for brevity 'the COFEPOSA Act'), observed that Section 3 of the COFEPOSA Act is *in para materia* to Section 8 of the Act. Further, Their Lordships, while interpreting the purpose of the said Section, particularly with reference to Article 22 of the Constitution of India, held as under:

> **"If there are any documents, statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu, because being incorporated in the grounds of detention, they form part of grounds and the grounds furnished to the detenu cannot be said to be complete without them. It would not therefore be sufficient to communicate to the detenu a bare recital of the grounds of detention, but the copies of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time."**

6. The purpose of the above observation obviously was to enable the detenu to make an effective representation after going through the relevant material

along with the grounds.

7. In other words, the grounds of detention shall be understood as the grounds basing on which the competent authority passed the order of detention. Furthermore, if such a condition in Section 8 of the Act is not available, there is likelihood of misusing this provision. Therefore, in order to avoid any such misuse, all reasonable steps have to be taken and reasonable opportunity has to be given to the detenu. Therefore, mere supplying of the grounds of detention itself is not sufficient unless the material basing on which such grounds were made out against the detenu is also supplied. Therefore, it cannot be said that reasonable opportunity has been given to the alleged detenu, inasmuch as, the fundamental rights enumerated under Article 22 of the Constitution of India, are involved and such rights cannot be interfered with.

8. Now coming to the case on hand, it is an admitted fact that no material, on the basis of which the grounds of detention are made out, was supplied to the detenu. In such a case, the detention, obviously, is held to be illegal.

9. In view of the said fact and in the light of the judgment of the apex Court (supra), we are of the opinion that the order of detention, dated 26.05.2007, against the detenu, namely Nalgonda Seetha Ramaiah, is liable to be side.

10. In the result, the writ petition is allowed and the impugned order of detention, dated 26.05.2007, passed by the second respondent, the District Collector and District Magistrate, Guntur District, vide Proc.SR.No.01/2007/NRT/B1, is set aside.

11. The detenu by name Nalgonda Seetha Ramaiah

shall be released forthwith, if he is not required in any other case/crime. However, there shall be no order as to costs.

D.S.R.VARMA, J

D.APPA RAO, J

05.07.2007
VGB

[1] AIR 1980 SC 1983